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Supreme Court of the United States

Counsel for Respondent

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 426

JESSE BLACKBURN,
Petitioner,

VS.

STATE OF ALABAMA,
Respondent.

BRIEF AND ARGUMENT ON THE MERITS

BRIEF AND ARGUMENT FOR RESPONDENT

I

OPINION OF THE COURT FOLLOWS

The opinion of the Court of Appeals of Alabama is reported as follows:

Jesse Blackburn v. State of Alabama, 8th Division 407, 88 So. 2d 199.

The case was decided on November 16, 1954. An application for rehearing in the Court of Appeals of Alabama was denied without opinion on March 15, 1955. The petitioner filed a petition for writ of certiorari to the Court of Appeals of Alabama in the Supreme Court of Alabama and the writ was denied on April 12, 1956. **Jesse Blackburn v. State of Alabama**, 8th Division 805, 88 So. 2d 205. An application for rehearing in the Supreme Court of Alabama was denied without opinion on June 21, 1956.

II.

JURISDICTION

The petitioner has been granted a writ of certiorari from the Supreme Court of the United States to review the judgment of the Court of Appeals of Alabama rendered November 16, 1954, rehearing denied March 15, 1955, under the provisions of Title 28, Section 1257, United States Code, Judiciary and Judicial Procedure. (See petitioner's brief pages 2 and 3)

III.

STATUTE AND CONSTITUTIONAL PROVISION

The statute prescribing the punishment for one convicted of robbery in Alabama is Title 14, Section 415, Code of Alabama 1940. Said statute reads as follows:

"§415. Punishment of robbery.—Any person who is convicted of robbery shall be punished, at the

discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years."

Section 1 of the Fourteenth Amendment to the Constitution of the United States is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV

ISSUES

Whether the petitioner, who stands convicted in a State court of robbery, was denied "due process" of law within the meaning of the Fourteenth Amendment to the Constitution of the United States by virtue of the admission into evidence, over his objections, of his confession which he alleges to have been made involuntarily. The State of Alabama denies the soundness of this contention and insists that the confession was voluntary and was, therefore, admissible into evidence.

V

STATEMENT OF THE CASE

The petitioner was tried and convicted in the Circuit

Court of Colbert County, Alabama, under an indictment charging the offense of robbery. The petitioner entered a plea of "not guilty by reason of insanity" and a general plea of "not guilty" and was found guilty as charged in the indictment by the jury. Punishment was fixed at imprisonment in the penitentiary of Alabama for a period of twenty years. The trial proceedings were reviewed by the Court of Appeals of Alabama which affirmed the judgment of conviction and the sentence imposed. **See Jesse Blackburn v. State** (Alabama Appellate, 8th Division 407, November 16, 1954). The Supreme Court of Alabama on April 12, 1956, denied his petition for writ of certiorari to the Court of Appeals of Alabama. On September 15, 1956, petitioner filed with the Supreme Court of the United States his petition for writ of certiorari directed to the Court of Appeals of Alabama. The writ of certiorari was granted by this Honorable Court on December 3, 1956. See **Jesse Blackburn v. State of Alabama,** Docket No. 426, October Term 1956, Supreme Court of the United States.

VI

STATEMENT OF THE FACTS

The facts of this case, as found by the Court of Appeals of Alabama, are as follows:

"The State's evidence was to the effect that Thomas Clyde Wright operated a rolling store for one W. N. Greenhill. On April 19, 1948, Mr. Wright drove the store over his regular route. He started up Crowell Hill, on the Allsboro Road, in Colbert County, after dark. At that time he had in his possession a bill fold containing approximately $76.00 belonging to Mr.

Greenhill and a bill fold containing $51.00 of his own money. As he put his truck in 'double low' he saw someone coming off the bank toward the road with something in his hand that looked like a gun. He remembered nothing further until he regained consciousness in a hospital two weeks later. At that time he had neither the bill folds nor the money.

"Mr. and Mrs. Hubbard and J. C. James were on Crowell Hill and saw the rolling store stopped on the road. A maroon colored Buick, bearing an Illinois license plate, was parked by it. These witnesses heard a 'rumbling noise' like the sounds of a struggle from inside the store. Mr. James testified two colored men got into the Buick and drove away. Mr. James and Mr. Hubbard armed themselves and returned to the scene about thirty minutes later. They found Mr. Wright at the rear of the store, trying to scotch it so it would not roll down the hill. He was badly beaten, dazed and 'out on his feet.' They found a blood-stained tire tool and two hats inside the store.

"Deputy Sheriff Stanford arrived at Crowell Hill between 10:30 and 11:30 that night and found two hats and a tire tool and blood inside the store. The articles found by him were introduced in evidence.

"Dr. Gary testified he examined Mr. Wright at the hospital on the night of the alleged robbery. He was unconscious and bleeding from the ears and nose. X-rays made later showed multiple linear fractures on the skull, caused by a blunt instrument used with great force.

"At the time of the alleged crime appellant was a resident of Chicago, Illinois. About a week prior there-

to he came to Alabama in company with Dennis Thorne and Robert Howell for the purpose of burying his deceased brother. The trip was made in a maroon Buick with an Illinois tag. The prosecuting witness testified he had seen these men and the automobile at the home of Dennis Thorne's brother on the Allsboro Road. One of the men bought a package of cigarettes from him and paid for it with a twenty dollar bill. On April 16, 1948, appellant married Fanny Rogers in Iuka, Mississippi. There was a wedding party that night at Jack Thorne's house. The couple spent that night at Leon Fuqua's and the next afternoon appellant left with Howell and Dennis Thorne. The next time his bride saw him was in May, 1948, when he was in the Colbert County jail.

"According to the State's evidence, on May 8, 1948, after appellant was arrested and brought to Colbert County from Gary, Indiana, he confessed the crime to deputy sheriff Stanford. The confession was reduced to writing and signed by appellant two days later. The confession was admitted in evidence as State's exhibit 'A' on voir dire examination for the purpose of determining defendant's mental capacity at the time of making the confession. It was also admitted in evidence before the jury as State's exhibit 'D.' In the confession the defendant detailed the movements of the trio from the time they left Chicago until the night of the robbery; told of his marriage to Fanny Rogers; said there was a conspiracy between the three men to rob the driver of the rolling store, which defendant said he subsequently tried to prevent. He stated that at the time of the robbery, 'I carried a small wrench which I now identify as the one I used. Shirt I was wearing that night I identify as same which had blood on it and was

washed out by Burneice Moore the night we spent in Nashville. The hat officers found in Rolling Store I identify it as the one Robert Hal was wearing at the time of the robbery, but this hat belonged to me. I now have been presented with a heavy tire tool which officers said was found in Rolling Store, I identify it as the one Robert Hal used to hit the driver of the rolling store, three times on the head.' In the confession defendant stated he flagged the store down on the steep part of the hill. Robert Howell rushed up behind defendant as he stepped on the running board. After Robert Howell struck the driver defendant got the change from his right front pocket while Robert Howell was going through his other pockets. After leaving the scene defendant helped to count the money and received $28.00 as his share and he disposed of some checks that were in the bill folds.

"For the defandant, Thomas J. Grace, a field examiner for the office of the Regional Attorney of the Veterans' Administration, identified certain records showing that at the time of the commission of the alleged crime defendant was a 25 year old negro man with a history of mental disorders. On July 1, 1944, at Drew Field, Florida, he was diagnosed as unfit for military service because of psychosis. The Report of the Board of Medical Officers was that he had 'recurrent periods of marked confusion and over-activity, assaultiveness with catatonic posturing, teeth grinding followed by severe headache and complete amnesia concerning his behavior, constitutes a threat to others when subject to such attacks,' and recommended his transfer to a Veterans administration facility for further treatment.

"On September 8, 1944, appellant was admitted to a

Veterans Administration hospital at Danville, Illinois, from Drew Field, with diagnosis of dementia praecox, simple type, and a history of hallucinations and defective judgment and insight. There, on September 11, 1944, he was given a diagnosis of 'psychosis, manic depressive, manic phase.' On February 14, 1948, the Danville Veterans hospital placed defendant on a ten-day leave of absence with his sister. He failed to return at the end of ten days and was placed on a 90 day trial visit. On May 24, 1948, not having returned, he was formally discharged from the hospital. His diagnosis on discharge was 'Schizophrenic reaction, paranoid type. The alleged offense occurred prior to the discharge from the hospital. Also a report of an examination by Dr. M. L. Moorer, neuropsychiatrist, April 22, 1949, with a diagnosis 'Schizophrenic reaction, paranoid type. Insane, incompetent and should be placed in insane hospital.' And a rating sheet by the Veterans' Administration; showing defendant's rating to be, 'Schizophrenic reaction, paranoid type, incompetent from 5-24-48.'

"The record discloses that after appellant's arrest he showed signs of insanity in the jail and was admitted to Searcy Hospital for observation and report under the provisions of Articles 1 and 2 of Title 15, Code 1940, on July 29, 1948, and remained there until November 12, 1952, when he was released into the custody of Colbert County authorities as sane and competent to stand trial.

"On the trial defendant testified the signatures on the bottom of each page of the purported statement to deputy sheriff Stanford appeared to be his signatures but the statement was not true and he had no recollection of having made or signed it. He did not remember being questioned by the sheriff or his deputy and did

not remember that anything in the statement took place. He testified he did not commit the offense charged. He also testified he did not remember being in Colbert County in 1948; did not remember being in jail there in 1948 and that he did not remember getting married.

"After proper predicate was laid the State offered the confession in evidence.

"The defendant objected to the introduction of the confession because the corpus delecti has not been proven and because the defendant could be shown not to have had the mental capacity to be a witness on May 8, 1948.

"The defendant, on voir dire, introduced depositions of Dr. Harry S. Rowe, assistant Superintendent of Searcy Hospital, and Dr. J. S. Tarwater, Superintendent of Alabama State Hospitals. The report of the lunacy commission appointed July 26, 1948, to investigate the sanity of defendant was attached as exhibit 'B' to each of said depositions. This report was signed by Drs. Tarwater, Rowe, and A. M. Richards, and recites in part:

"It is the opinion of each of us, and our opinion jointly and collectively, that the said Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948, was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the com-

mission of the crime for which he is charged."

"Dr. Rowe stated in answer to interrogatories that defendant was suffering from schizophrenia of the paranoid type; in his opinion he was insane at the time of the commission of the crime.

"Dr. Tarwater stated that the commission, from a study of the reports and the findings in the case, immediately after hospitalization, was of the opinion that defendant was mentally ill and incompetent during April 1948, and during the period from January 1, 1948 to July 29, 1948.

"The State introduced the cross interrogatories of Drs. Rowe and Tarwater and the depositions of Dr. A. M. Richards, a staff physician at Searcy Hospital, and a member of the lunacy commission.

"Dr. Rowe stated that at times while in the hospital defendant's thinking and behavior was normal, and that both his thinking and behavior were more normal than abnormal, and that he had lucid intervals.

"Dr. Tarwater stated defendant exhibited abnormal thinking and abnormal behavior for several months after his admission to the hospital. In his opinion defendant was mentally incompetent on April 19, 1948, and was mentally ill and mentally incompetent on May 8, 1948.

"Dr. Richards stated in answer to direct interrogatories that he, Dr. Tarwater and Dr. Rowe found, as stated in the report, that defendant was insane at the time of the commission of the crime for which he was charged. In answer to cross interrogatories he

stated that defendant had been normal mentally since he first saw him; that at times his behavior was normal; his thinking and his behavior was more normal than abnormal; at times he was rational in his thinking and behavior; he did not think defendant had lucid intervals; his mental condition on April 19, 1948, was normal, and his mental condition on May 8, 1948, was good; that defendant did not have psychotic episodes at any time that he saw him.

"Deputy Sheriff Stanford then testified for the State that he questioned defendant in the Colbert County jail on May 8, 1954, for five or six hours and returned after supper and continued the questioning. The greater part of the time he was alone with the defendant, but the Sheriff and deputy Bo Riner were present some of the time. Defendant answered questions like any normal person he has examined. He told his name, address, his past occupations and the date he left Chicago. The witness reduced the statement to writing and read it to defendant in the presence of the sheriff, Mr. Riner, and Mrs. Craig, the notary public, and the defendant signed it. There was nothing about defendant's appearance to indicate that he was a sick man. No threats or offers of reward were made to induce defendant to sign the statement.

"The State again offered the confession as State's Exhibit 'A' only for the purpose of the voir dire hearing. Defendant objected to its introduction because it was taken over a period of hours; it could not reflect the continuity of thought on the part of the witness; could not determine in any way his mental capacity to make the statement; it is otherwise shown to be involuntary; the corpus delicti has not been proven; the

statement is incompetent and illegal, and by express statement of Mr. Stanford the statement was put down in his words and not those of defendant. The court overruled the objection, stating that the confession was being received at that time only for the court's inspection on the question of whether it should be admitted later for the jury's consideration. Defendant duly excepted.

"The jury returned to the court room and the State again laid a predicate for the introduction of the confession. On cross examination deputy Stanford testified that on May 8, 1948, he talked with the defendant from 1:00 to 6:00 and from 7:00 until 10:00 or eleven that night. Most of the time they were in a room 4 x 6 or 6 x 8; part of the time the sheriff and another deputy were present; they might have worn their guns and badges; after staying in jail for some time defendant began to show signs of insanity. The witness also testified the defendant talked rationally and gave sensible answers at the time the confession was made. His eyes were clear and he did not appear to be nervous. The State then offered the confession in evidence as exhibit 'D' to the witness' testimony. The court overruled defendant's objection and defendant excepted."

The Court of Appeals of Alabama, further found that there was no testimony tending to contradict the evidence of the State that the confession was not induced by duress or promise.

VII

BRIEF AND ARGUMENT

1. The rule in Alabama, as to the admissibility of

confessions in evidence, is that, prima facie, a confession is not voluntary, and there must be evidence addressed to the trial judge rebutting that presumption and showing prima facie that the confession was voluntarily made, unless; of course, the circumstances attending the confession affirmatively disclose its character. When a proper predicate has been laid, voluntary confessions become admissible and their weight is for the jury.

Smitherman v. State, (Ala. 1956), 85 So. 2d 427;

Hines v. State, 260 Ala. 668, 72 So. 2d 296;

Myhand v. State, 259 Ala. 415, 66 So. 2d 544;

Taylor v. State, 249 Ala. 130, 30 So. 2d 256;

Phillips v. State, 248 Ala. 510, 28 So. 2d 542;

Johnson v. State, 242 Ala. 278, 5 So. 2d 632;

Dyer v. State, 241 Ala. 679, 4 So. 2d 311;

Vernon v. State, 239 Ala. 593, 196 So. 96;

Canty v. State, 238 Ala. 384, 191 So. 260;

Stewart v. State, 231 Ala. 594, 165 So. 840;

Jackson v. State, 226 Ala. 72, 145 So. 656.

As pointed out under the list of authorities cited, supra, the rule in Alabama is that confessions are prima facie involuntary and, prior to their admission into evidence, the prosecution must lay a predicate for their admission by testimony showing their voluntary character. When a predicate has been laid, confessions become admissible and their weight is for the jury. We submit that the predicate laid preliminary to the admission of the petitioner's confession was legally suf-

ficient and clearly demonstrated the voluntary character of his confession. Being voluntary and not having been induced by extraneous forces of circumstance calculated to deprive the petitioner of his will and mental freedom either to admit, deny, or stand mute, to the accusation of crime, his confession of guilt flowed from his desire to unburden his soul. Since the law always has recognized the right of an accused freely to confess guilt, the petitioner was not deprived of "due process."

We look to the facts from the record for the nature of the predicate laid. It was established through voir dire examination of Deputy Sheriff Stanford. See statement of facts, supra. Mr. Stanford testified that he questioned the petitioner for several hours on May 8, 1948; that the greater part of the time he was alone with the petitioner, but the sheriff and another deputy sheriff were present some of the time; that the petitioner answered questions like any normal person; that he told his name, address, his past occupations, and the date he left Chicago; that the confession was reduced to writing and read to the petitioner in the presence of the sheriff, another deputy sheriff, and a notary public, and the petitioner signed it; that there was nothing about the petitioner's appearance to indicate that he was a sick man; and that no threats or offers of reward were made to the petitioner to sign the confession.

It was shown by the evidence that, prior to the petitioner's confession, no one had offered him any promise, hope of reward, remuneration, or inducement of any kind; that he was not told that it would be better for him if he did confess or worse for him if he did

not confess; that he was not threatened or coerced, nor was any force or violence used toward him to induce a confession.

In brief, the petitioner's counsel states that petitioner testified that he had no recollection of the crime, denied the truth of the confession, and stated that he did not remember making the confession. This Honorable Court's attention is called to the fact that the petitioner did not testify on voir dire, but waited until after the confession had been received in evidence by the trial court before he took the witness stand.

The only evidence introduced on voir dire, in addition to the testimony of Mr. Stanford, was the depositions of the three doctors who made up the lunacy commission appointed July 26, 1948, to investigate the sanity of the petitioner. The report of this lunacy commission stated that the petitioner was insane at the time the report was made and at the time of the crime. However, the doctors' answers to interrogatories propounded to them showed that they were far from unanimous in their opinion as to the mental condition of the petitioner.

Dr. Rowe stated that at times while in the hospital, the petitioner's thinking and behavior were normal and that both his thinking and behavior were more normal than abnormal, and that he had lucid intervals.

Dr. Richards stated that the petitioner had been normal mentally since he first saw him; that at times his behavior was normal; that his thinking and his behavior were more normal than abnormal; that at times he was rational in his thinking and behavior; that his mental condition on April 19, 1948, was normal,

and his mental condition on May 8, 1948, was good; that petitioner did not have psychotic episodes at any time that he saw him.

The testimony of the doctors comprising the lunacy commission also showed that the report of that commission was not based solely on observation or examination of the petitioner by the doctors. Dr. Rowe stated that he probably observed the petitioner only twice a week and some of the times this observation was merely by seeing him as the doctor passed him on general ward rounds. Dr. Tarwater stated that he saw the petitioner on at least four or five occasions during his stay in the Searcy Hospital. and that approximately two or two and one-half hours would cover the entire time he saw the petitioner. Dr. Richards stated he did not see the petitioner often and for only ten or fifteen minutes at a time.

In the light of the conflicting evidence on voir dire, a question of fact for the determination of the trial judge was presented. The petitioner's confession, we submit, was lawfully received in evidence and without denial of "due process."

2. Alabama authorities are clear that a confession otherwise shown to have been voluntary is not rendered inadmissible by the mere fact that the accused confessed to officials while under arrest and in their legal custody. Incarceration in the ordinary manner and questioning by the authorities does not per se render the confession involuntary.

Dennison v. State, 259 Ala. 424, 66 So. 2d 552;

Myhand v. State, 259 Ala. 415, 66 So. 2d 544;

Thomas v. State, 257 Ala. 124, 57 So. 2d 625;

Wilson v. State, 256 Ala. 12, 53 So. 2d 559;

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Burns v. State, ~~220~~ 226 Ala. 117, 145 So. 436;

Redd v. State, 69 Ala. 255.

The courts of Alabama, as well as the courts of other states, and the federal courts have consistently held to the rule that a confession, otherwise shown to have been voluntary and admissible in evidence, is not rendered inadmissible by the mere fact that it was made while the accused was under arrest and in legal custody of law enforcement officers. No decision to the contrary by the Supreme Court of the United States has come to our attention. The fact that the vast majority of voluntary confessions are made to police officers makes evident the soundness of the rule. Upon such officers rest the primary burden and responsibility for the detection and prosecution of crime. The time tested process of investigation at the scene of the crime, followed by police interrogation of suspects, is

today frequently society's only alternative in its effort to cope with an increasingly difficult crime problem. Here we emphasize that the continued acceptance by our courts, state and federal, of this historical crime detection method foreshadows no encroachment upon those rights guaranteed our citizens by the Fourteenth Amendment to the Constitution of the United States. The limit of those rights is that no citizen shall be compelled to incriminate himself. It is true that the pages of history have been bloodied by abuses of the privilege and practice of police interrogation of persons suspected of crime. It is not necessary to travel to foreign shores to find such abuses. They have from time to time echoed through the halls of justice in almost every court in our land. The instances of abuse in recent years, however, have shown a remarkable and steady decline attributable in our judgment to the widespread training of police personnel, under federal sponsorship, in scientific methods of crime detection, and to the watchful eye of this Honorable Court. To outlaw all extra-judicial confessions, voluntary and involuntary alike, would, in our judgment, entail consequences far more serious to society than the abuses which sometimes occur.

The record in the case at bar shows that the petitioner was questioned during the afternoon and early night of May 8, 1948, by only one law enforcement officer. At this time, the petitioner was under arrest and was being held in the Colbert County jail. We submit that the petitioner was not denied any right guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the United States likewise has consistently held to the rule that spontaneity is

not necessary to the voluntariness of a confession, and that the proper questioning of a suspect in custody of law enforcement officers is not prohibited either by the common law or by the Fourteenth Amendment. No denial of "due process" can be assumed from the bare fact that the accused is interrogated by investigating officers and confesses in response to their questioning.

Brown v. Allen, 344 U. S. 443, 73 S. Ct. 397, 97 L. Ed. 469;

United States v. Carignan, 342 U. S. 36, 72 S. Ct. 97, 96 L. Ed. 48;

Gallegos v. Nebraska, 342 U. S. 55, 72 S. Ct. 141, 96 L. Ed 86;

Taylor v. Alabama, 355 U. S. 252, 68 S. Ct. 1415, 92 L. Ed. 1935;

Lyons v. Oklahoma, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed. 1481;

United States v. Mitchell, 322 U. S. 65, 64 S. Ct. 896, 88 L. Ed. 1140;

Johnson v. Alabama, 316 U. S. 693, 62 S. Ct. 1299, 86 L. Ed. 1763;

McNabb et al. v. United States, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819;

Lisenba v. California, 314 U. S. 219, 62 S. Ct. 280, 86 L. Ed. 166;

Ziang Sung Wan v. United States, 266 U. S. 1, 45 S. Ct. 1, 69 L. Ed. 131;

Powers v. United States, 223 U. S. 303, 32 S. Ct. 281, 56 L. Ed. 448;

Hardy v. United States, 186 U. S. 224, 22 S. Ct. 889, 46 L. Ed. 1137;

Bram v. United States, 168 U. S. 532, 18 S. Ct. 183, 42 L. Ed. 568;

Wilson v. United States, 162 U. S. 613, 16 S. Ct. 895, 40 L. Ed. 1090;

Pierce v. United States, 160 U. S. 355, 16 S. Ct. 321, 40 L. Ed. 454;

Hopt v. Utah, 110 U. S. 574, 4 S Ct. 202, 28 L. Ed. 262;

Brinegar v. United States (C. C. A.—Okla.), 165 Fed. 2d 512, Affd. 338 U. S. 160, 69 S. Ct. 1302, 93 L. Ed. 1375;

United States v. Gottfried et al. (C. C. A.—N. Y.), 165 Fed. 2d 360, cert. den. 333 U. S. 860, 68 S. Ct. 738, 92 L. Ed. 1139.

No decision rendered by the Supreme Court of the United States is contrary to the rule followed by the states generally, and by Alabama in particular. Our nation's highest court recognizes the admissibility of confessions, otherwise shown to be voluntary, even though made by an accused while in the custody of law enforcement officers. While, admittedly, that court has consistently cast aside convictions had in state courts when the circumstances of the interrogation was shown to be coercive, we do not interpret the trend of its decisions to be towards outlawry of all interrogation by the authorities of persons accused of crime. On the contrary, the court has consistently held to the principle that a confession made to investigating officers is not per se involuntary, nor inadmissible in evidence if shown to have sprung from the free

will and choice of the accused to unburden himself by confessing the truth. While it is clear from the decisions that illegal pressures may be applied against an accused other than by actual physical or mental forces, threats, or intimidation, and that prolonged examination may of itself be inherently coercive, it is equally clear that confessions given after relatively short periods of interrogation, such as that shown by the evidence in the case at bar, are admissible if otherwise shown to be uncoerced. See **Taylor v. Alabama,** supra, **Lyons v. Oklahoma,** supra, and **Johnson v. Alabama,** supra.

4. Convictions of crime in state courts, obtained wholly or in part by introducing in evidence a confession of the accused, have been set aside by the Supreme Court of the United States only when all the surrounding facts and circumstances left no doubt that the "confession" was not voluntary. The test applied has been, whether the confession was the product of other than reasoned and voluntary choice. An accused is deprived of "due process" only when, by extraneous pressures and influence, he is deprived of mental freedom to withhold inculpatory statements. Admittedly, actual brutality, torture, beating, starvation, physical pain, or threatened violence are not necessary to void a confession. Any method calculated to break the will of the accused, and leave him without free choice to admit or deny or stand mute to the charge, is sufficient. Interrogation of a suspect has voided a confession thereby obtained only in situations inherently coercive in which the "suction process" was used. Interrogation per se has not been outlawed. Where coercion is lacking, no constitutional right of the accused is violated if, in answer to police questioning, he freely confesses.

Stein v. New York, 346 U. S. 156, 73 S. Ct. 1077, 97 L. Ed. 1522;

Watts v. Indiana, 338 U. S. 49, 69 S. Ct. 1347, 93 L. Ed. 1434;

Harris v. South Carolina, 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1440;

Turner v. Pennsylvania, 338 U. S. 62, 69 S. Ct. 1352, 93 L. Ed. 1443;

Lee v. Mississippi, 332 U. S. 742, 68 S. Ct. 300, 92 L. Ed. 330;

Haley v. Ohio, 332 U. S. 596, 68 S. Ct. 302, 92 L. Ed. 224;

Malinski et al. v. New York, 324 U. S. 401, 65 S. Ct. 781, 89 L. Ed. 1029;

Lyons v. Oklahoma, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed 1481;

Ashcraft et al. v. Tennessee, 322 U. S. 143, 64 S. Ct. 921, 88 L. Ed. 1192;

Anderson et al. v. United States; 318 U. S. 350, 63 S. Ct. 599, 87 L. Ed. 829;

McNabb et al. v. United States, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819;

Ward v. Texas, 316 U. S. 547, 62 S. Ct. 1139, 86 L. Ed. 1663;

Lisenba v. California, 314 U. S. 219, 62 S. Ct. 280, 86 L. Ed. 166;

Vernon v. Alabama, 313 U. S. 547, 61 S. Ct. 1092, 85 L. Ed. 1513;

Lomax v. Texas, 313 U. S. 544, 61 S. Ct. 956, 85 L. Ed. 1511;

White v. Texas, 309 U. S. 631, 60 S. Ct. 706, 84 L. Ed. 989;

Canty v. Alabama, 309 U. S. 629, 60 S. Ct. 612, 84 L. Ed. 988;

Chambers et al. v. Florida, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716;

Brown et al. v. Mississippi, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682;

Ziang Sung Wan v. United States, 266 U. S. 1, 45 S. Ct. 1, 69 L. Ed. 131.

We concede that "due process" within the meaning of the Fourteenth Amendment is lacking where an accused has been convicted in a state court upon the basis of a confession not shown to have been voluntary. We concede that continued and unremitting police interrogation of an accused over such a period of time as is calculated to break his will and mental freedom to admit, deny or stand mute, is inherently coercive, and that a confession obtained by such a suction process is involuntary. See **Ashcraft et. al. v. Tennessee.** supra. We submit, however, that the facts at bar do not bring the petitioner's case within that rule. The record raises no question of police brutality. It raises no suspicion that the petitioner was "sweated" to the breaking point. There is no indication that the petitioner's arraignment was delayed or that he unlawfully was held in custody or denied his constitutional right to remain silent. There is no evidence of discourtesy towards or indignities inflicted upon this petitioner. We find no indication that the law enforcement officers were not friendly or sympathetic towards him. Since there is no indication that he requested or desired the services of an attorney, the officers having his custody are not

charged with having denied his constitutional right in that respect. We find in the circumstances of his interrogation nothing "inherently coercive" as that term has been used and defined by the decisions of this Honorable Court construing the "due process" clause of the Fourteenth Amendment to the Constitution of the United States as it relates to police interrogation of persons suspected of crime. We submit that the facts of the petitioner's case are not analogous to those of any decisions of this court concluding that prolonged questioning of an accused had, of itself alone, rendered his confession involuntary. Cf. **Watts v. Indiana,** supra, **Harris v. South Carolina,** supra, and **Turner v. Pennsylvania,** supra.

5. If the confession springs solely from the accused's remorse, apprehension, and consciousness of guilt, it is voluntary and admissible. Where sanity is an issue, the jury's finding that the accused was sane is equivalent to a finding that he had mental capacity to confess.

Dennison v. State, 259 Ala. 424, 66 So. 2d 552;

Redwine v. State, 258 Ala. 196, 61 So. 2d 724;

People v. Cokahnour, 120 Cal. 253, 52 Pac. 505;

Fitzhurgh v. State, 35 Ala. App. 18, 43 So. 2d 831;

State v. Pamelia, 122 La. 207, 47 So. 508;

State v. Jones, 127 La. 694, 53 So. 959;

State v. Jones et al., 47 La. Ann. 1525; 18 So. 515;

Young et al. v. State, 90 Md. 579, 45 Atl. 531;

Carlisle v. Texas, 37 Tex. Crim. Rep. 108, 38 S. W. 991;

Herndon v. State, 50 Tex. Crim. Rep. 552, 99 S. W. 558;

State v. Leuth, 5 Ohio C. C. 94;

Bettis v. State, 160 Ala. 3, 49 So. 781;

Eskridge v. State, 25 Ala. 30;

State v. Sirmay, 40 Utah 525, 122 Pac. 748;

State v. Crank, 2 Bail. (S. C.) 66, 23 Am. Dec. 117;

Cahill v. People, 111 Colo. 29, 137 Pac. 2d 673, 148 A. L. R. 536;

Vinzant v. State, 28 Ala. App. 220, 180 So. 736;

Taylor v. State, 27 Okla. Cr. 165, 225 Pac. 988;

People v. Cleveland, 251 Mich. 542, 232 N. W. 384;

People v. Lehew, 209 Cal. 336, 287 Pac. 337;

Eiffe v. State (Ind.), 77 N. E. 2d 750.

See:

20 Amer. Juris., Evidence, Section 523, p. 448;

22 C. J. S., Criminal Law, Section 828, p. 1451;

50 L. R. A. (N.S.) 1082, note;

18 L. R. A. (N.S.) 790, note.

The gist of the petitioner's contention is that since the constitutional propriety of his interrogation should be measured by his alleged mental instability, such interrogation was, as against this particular person, inherently coercive, and that his confession was, therefore, involuntary as a matter of law. We cannot accede to the soundness of this argument and submit that it is without support of legal authority. The trial judge, who heard the testimony on voir dire from the wit-

nesses, found against this contention when he admitted the confession into evidence. The petitioner pleaded specially "not guilty by reason of insanity," and his sanity was a prime factual issue in the case. The jury resolved that issue against him after hearing all the testimony in the case, and after hearing the full and fair instructions from the trial judge. That finding by the jury was equivalent to a finding that he was competent to testify as a witness and competent to confess his deed. The contents of the confession showed that the petitioner explained the events before, during, and after the crime in great detail to Deputy Sheriff Stanford. This petitioner obviously confessed through the exercise of his free will and was prompted to unburden his soul by a full disclosure of the truth. No extraneous pressure was exerted against him. His right voluntarily to confess was a personal and constitutional right.

VIII

CONCLUSION

We believe that the prosecution laid a proper and sufficient predicate establishing the voluntary character of the petitioner's confession, and that it, therefore, was properly admitted into evidence. We conclude that the petitioner was not denied "due process" within

the meaning of the Fourteenth Amendment to the Constitution of the United States. We, therefore, respectfully submit that the case at bar should be affirmed.

Respectfully submitted,
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I, Bernard F. Sykes, one of the attorneys for Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 25th day of April, 1957, I served a copy of the foregoing brief and argument on one of the attorneys for the petitioner by mailing a copy in a duly addressed envelope to said attorney of record as follows:

TO: Truman Hobbs
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